IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5260 OF 2007

Smt. Usha Dilip Mirchandani.... Petitioner

versus

Khurshid Saifuddin Bohri & ors..... Respondent.

Ms. Asha M. Bhambwani for the petitioner.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JULY, 2007

P.C.;

1. The respondent nos. 1 and 2 are original plaintiffs who had instituted a suit for specific performane of an agreement in regard to the suit property. The present petitioner is the original defendant no.1 whereas the respondent no.3 herein is the original defendant no.2. Defendant no.2 has entered into an agreement of sale with the plaintiff under power of attorney granted by the present petitioner. According to the plaintiff, the property was agreed to be purchased by them for a consideration of Rs.30 lacs and a sum of Rs. 7 lacs has been said to have been paid by the plaintiff by way of earnest money.

2. During pendency of the suit, the defendant no.1/petitioner moved an application under Order 6,

Rule 17 of Civil Procedure Code seeking to amend the written statement. The petitioner wants to plead that he has executed the agreement of sale on 25-2-2003 in favour of one Jijus Sudhir Lal and Neelam Sudhir Lal for a total consideration of Rs.60 lacs and a part of consideration to the extent of Rs.10 lacs are paid by the purchasers. In the written statement originally filed, there is no mention of execution of agreement of sale. On the contrary in para 6 of the written statement the petitioner has stated that he does not propose to sell the property. During pendency of the suit and contrary to the representation made in para 6 of the written statement, the petitioner claims to have sold the suit property and thus sought an amendment of the written statement. The trial court has found that as the property has been sold during pendency of the suit, the transfer is hit by section 22 of the Transfer of Properties Act. The said transfer thus shall have no bearing on the issues to be decided in the suit in question. Coupled with the said reasons, the trial court was also of the view that the application for amendment has not been moved bonafidely. Hence rejected the same.

2. Perused the order. The same does not call for any interference in exercise of writ jurisdiction. Hence writ petition is summarily dismissed.

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